§ 1263.17  Rebuttable presumptions.

(a) Rebutting presumptive compliance. The presumption that an applicant meeting the requirements of §§ 1263.7 to 1263.16 is in compliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) and (b), may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) Rebutting presumptive noncompliance. The presumption that an applicant not meeting a particular requirement of §§ 1263.8, 1263.11, 1263.12, 1263.13, or 1263.16, is in noncompliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)), and §1263.6(a)(2), (4), (5), or (6) may be rebutted. The applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) Presumptive noncompliance by insurance company applicant with “subject to inspection and regulation” requirement of §1263.8. If an insurance company applicant is not subject to inspection and regulation by an appropriate State regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by §1263.8, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by §1263.6(a)(4), notwithstanding the lack of rating or variance.

(d) Presumptive noncompliance with character of management requirement of §1263.12—(1) Enforcement actions. If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) Regulator confirmation. Written or verbal confirmation from the applicant’s appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) Written analysis. A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) Criminal, civil or administrative proceedings. If an applicant or any of its directors or senior officers has been the
subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report or, in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain—

(i) **Regulator confirmation.** Written or verbal confirmation from the applicant’s appropriate regulator that the proceedings will not likely result in enforcement action; or

(ii) **Written analysis.** A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action or, in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant’s operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) **Criminal, civil or administrative monetary liabilities, lawsuits or judgments.** If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report or, in the case of a CDFI applicant, occurring within the past three years, that are significant to the applicant’s operations, the applicant shall provide or the Bank shall obtain—

(i) **Regulator confirmation.** Written or verbal confirmation from the applicant’s appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§1263.11(b)(2) and 1263.16(a); or

(ii) **Written analysis.** A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §1263.11(b)(2) or §1263.16(a), or the net asset ratio set forth in §1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) **Presumptive noncompliance with home financing policy requirements of §§1263.13 and 1263.14(d).** If an applicant received a “Substantial Non-Compliance” rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation, or a “Needs to Improve” CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of “Needs to Improve” or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) **Regulator confirmation.** Written or verbal confirmation from the applicant’s appropriate regulator of the applicant’s recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) **Written analysis.** A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant’s home financing credit policy and lending practices meet the credit needs of its community.

§ 1263.18 Determination of appropriate Bank district for membership.

(a) **Eligibility.** (1) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member only of the Bank of the district in which the institution’s principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another State and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member of the Bank of a district adjoining the district in which the institution’s principal place of business is located, if demanded by convenience and then only with the approval of FHFA.